

REMARKS

Claims 1-8 were previously pending in the application. By the Amendment, Claim 7 is canceled without prejudice and Claims 1-6 and 8 remain unchanged.

The Examiner has identified two separate Species in the claimed invention as follows:

- (I) Species I, including Claims 1-6 and 8; and
- (II) Species II, including Claim 7

The Examiner has required election of one of these Species.

The Applicants elect to prosecute Species I, including Claims 1-6 and 8, with traverse, and respectfully request reconsideration of the restriction requirement.

First, the Examiner incorrectly applied international PCT rules to the present application. The present application is a US national application subject to examination under US laws. On page 3 of the restriction requirement dated September 8, 2005, the Examiner discusses PCT Rule 13.1 and 13.2 and the single general inventive concept. These rules are not the standard under which the present application should be examined. The present US application claims priority to International Application No. PCT/EP02/09465 filed Aug. 23, 2002 and published as WO 03/020094. This international application priority document underwent an international search and was already subject to PCT rules. The international Examiner determined the claims satisfied the single inventive concept requirement and did not restrict the priority document based on the same claims currently listed in the present US application. The Examiner is not permitted to re-evaluate the application under PCT rules and must apply US laws and rules to the examination of the present application. Therefore, Applicants respectfully request withdrawal of the restriction requirement.

Second, restriction of the present application is improper under US laws. As recited in MPEP §803, there are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) the inventions must be independent or distinct as claimed; *and* (B) there must be a serious burden on the examiner if restriction is required.

The burden is on the Examiner to provide reasons and/or examples to support the conclusion that the inventions are independent or distinct. The Examiner has not

provided any explanation of why the second outer wall is independent or distinct from the first outer wall. The Examiner has merely stated that the claims listed in Species I (including independent Claim 1) do not recite a second outer wall, while the claim listed in Species II (Claim 7 which depends from Claim 1) does recite a second outer wall. In general, nearly all dependent claims recite elements that are not recited in the independent claims from which they depend. This fact alone does not subject the dependent claim to a restriction requirement. Therefore, the Examiner has not met the necessary burden of proof that the present application includes independent or distinct inventions and Applicants respectfully request withdrawal of the restriction requirement.

Even if two inventions are independent or distinct, there must *also* be a serious burden on the examiner if restriction is required. "If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions." (See MPEP §803) Once again, the burden is on the Examiner to explain why there would be a serious burden if the claims were not restricted. The Examiner has provided no such explanation. In fact, the Examiner has already performed the search and examination of the present application and previously issued a first Office action dated March 18, 2005. This restriction requirement relates to original claims that were already addressed in the first Office action. Applicants question why the restriction requirement was issued at this point of prosecution of the present application. The Examiner has already performed the initial search and examination of the application, so there is no additional burden on the Examiner that would require a restriction. If there was a serious burden on the Examiner, the Examiner would have identified that burden during the initial search and examination of the present application, which did not occur. Therefore, the Examiner has not established that the search and examination of the present application cannot be made without serious burden and Applicants respectfully request withdrawal of the restriction requirement.

Practicality, efficiency, and the lack of a serious burden on the Examiner dictate that the restriction requirement should be withdrawn. The restriction requirement, if sustained, will prejudice the Applicants because of the increased cost and delay to the Applicants arising from further substantial filing fees and prosecution costs. The

Applicants view this restriction requirement as baseless because the Examiner cited PCT rules, has already performed the initial search and examination, and has not provided any explanations or reasons to support the conclusions made in the restriction requirement. Applicants reserve the right to pursue any applicable extensions to the term of a patent issuing from the present application as a result of any delay caused by this restriction requirement. In view of the foregoing, withdrawal of the restriction requirement is respectfully requested.

However, to further the prosecution of the application, the Applicants elect to prosecute Species I including Claims 1-6 and 8, with traverse, and cancel Claim 7 without prejudice. If the restriction requirement is withdrawn, Applicants request Claim 7 remains in the application and examination of Claim 1-8 is continued.

If the Examiner has any questions regarding this response, the Examiner is requested to contact the undersigned. If an extension of time for this paper is required, petition for extension is herewith made. Please note that Applicants have changed representation and are now represented by new counsel. The formal Revocation of Power of Attorney / New Power of Attorney and Change of Correspondence Address documents were previously filed in a separate paper.

Respectfully submitted,



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